

October 13, 2011

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: WC Docket No. 11-42 - Lifeline and Link Up Reform and Modernization
CC Docket No. 96-45 - Federal-State Joint Board on Universal Service
WC Docket No. 03-109 - Lifeline and Link Up
NOTICE OF EX PARTE PRESENTATION

Dear Ms. Dortch:

On October 3, 2011, the Link Up for America Coalition ("Coalition") submitted an ex parte presentation in the above-captioned docketed proceedings in which it describes what it calls its "Code of Conduct and Voluntary Interim De-Duping Process ("Code of Conduct") for the stated purpose of reducing waste, fraud and abuse in the Lifeline and Link Up programs. In a subsequent ex parte letter submitted October 6, 2011, the Coalition provides further information regarding its Code of Conduct, including the millions of dollars it would purport to save. This letter is being submitted on behalf of TracFone Wireless, Inc. ("TracFone") for the limited purpose of responding to those submissions.

At the outset, TracFone supports reasonable and responsible efforts to identify, prevent and eliminate waste, fraud and abuse of Universal Service Fund resources in general and waste, fraud and abuse of the USF low income program in particular. Indeed, TracFone has been at the forefront of such efforts. For example, TracFone initiated the first 60 day non-usage policy (Point 10 in the Coalition's Code of Conduct). It is the first and to date only ETC to require applicant date of birth and last 4 digits of Social Security Number information as a way to ensure that applicants are who they purport to be (possibly included within Point 3 of the Coalition Code of Conduct - "members require Lifeline applicants to provide information for an internal name and address duplicate cross check."). All TracFone marketing materials state that the program is Lifeline-supported (Point 1).

The fact is that every prong of the Coalition's Voluntary Lifeline and Link Up Code of Conduct either is already a federal and/or state requirement or is the subject of a proposal pending before the Commission in Docket No. 11-42. Moreover, each of the 10 prongs of the Coalition's Code of Conduct already has been implemented by TracFone -- by far the largest provider of wireless Lifeline service despite never having sought nor received a dime of Link Up support. While the Coalition's intent to have its members voluntarily commit to do what either is likely to be required or which is already required, and which has already been implemented by the largest wireless ETC is commendable, it provides no justification for such companies

continuing to receive Link Up subsidies to fund their commercial operations in the competitive market segment they have chosen to enter. No one can responsibly dispute that efforts should be made to detect and prevent duplicate enrollment in low income support programs. However, a proposal to identify and de-enroll duplicate enrolled customers does not address the critical issue before the Commission regarding Link Up -- whether or not ETCs in general and wireless ETCs specifically should receive Link Up support for any purpose other than to offset their customary charges for connecting low income customers to their telecommunications services at their customers' primary place of residence. For reasons which TracFone and others have described in detail in prior submissions, Link Up support should not be available for such purposes since it would violate the Commission's Link Up rules. The Commission's Link Up rules are explicit. Link Up support is to be used to reduce "*the carrier's customary charge for commencing telecommunications service for a single telecommunications connection at a consumer's principal place of residence.*" (47 C.F.R. § 54.411(a)).

The most significant aspect of the Coalition's ex parte filings describing its Code of Conduct proposal is that they demonstrate the profound and growing impact that Link Up subsidies to wireless ETCs are having on the USF -- an impact far greater than even TracFone believed. In TracFone's Additional Comments on Specified Issues filed in this proceeding, it indicated that in 2010, wireless ETC Link Up subsidies had cost the USF more than \$23 million.¹ Based on data provided by the Coalition, that 2010 number does not even come close to the current level of wireless ETC Link Up payments. Attached to the Coalition's October 6 letter is a Declaration of Chuck Campbell -- Principal of CGM, LLC. That declaration states that the nine members of the Coalition receive nearly one-half (about 45%) of total wireless ETC Link Up support. According to Mr. Campbell's declaration, for July 2010, those nine companies received \$2,583,399 out of a total of \$5,702,867 in total wireless ETC Link Up support.

If that monthly amount described by Mr. Campbell on behalf of the Coalition is annualized (assuming no growth between July and December 2011), total 2011 Link Up support received by those 9 Coalition members alone would be approximately \$31,000,788 (\$2,583,399 x 12). The total amount of Link Up support for all wireless ETCs would be \$68,434,404 (\$5,702,867 x 12). Indeed, even that amount appears to be significantly less than current total wireless ETC Link Up subsidies.

As candidly acknowledged by the Coalition in its submissions, these amounts are not being used by those ETCs to offset their customary charges for commencing telecommunications service for a single telecommunications connection at the customers' principal places of residence -- as expressly required by Section 54.411(a) of the Commission's rules (47 C.F.R. § 54.411(a)). Rather those funds are being used to subsidize "marketing and customer acquisition costs, costs associated with activating service," costs of "establishing a billing relationship,"

¹ Additional Comments on Specified Issues, filed by TracFone Wireless, Inc. August 26, 2011, at 6-7.

costs of confirming customer creditworthiness (*i.e.*, conducting credit checks), and costs of determining eligibility for low income support.²

Use of Link Up funds to buy media advertising, to solicit customers, to conduct credit checks, to render customer bills and to determine customer eligibility for Lifeline are not appropriate or lawful uses of Link Up subsidies. As indicated in prior submissions and as described in company websites, several Coalition members offer Lifeline service using non-billed “free minutes” models similar to that which TracFone has successfully implemented. In a non-billed Lifeline model, there are no customer bills and no extensions of credit. Thus, there would be no reason for those ETCs offering such non-billed Lifeline services to establish billing relationships or to conduct credit checks of their Lifeline customers.

Moreover, Link Up support was never intended to subsidize ETCs’ advertising and marketing costs, enrollment programs, or compliance with Commission and/or state-imposed Lifeline eligibility certification and verification requirements. As TracFone has described in prior filings, when ETCs invest in advertising and other outreach, they do not do so to promote the Lifeline program; they do so to promote **their** Lifeline programs. In a competitive market such as the market for Lifeline services, Link Up support from the USF should not be available for the purpose of subsidizing any ETC’s advertising.

Furthermore, as TracFone explained in a prior submission, most, if not all of the members of the Coalition do not provide wireless Lifeline service using their own facilities.³ Contrary to their inherently oxymoronic and self-serving description of themselves as ‘facilities-based resellers, these companies are wireless resellers and provide their wireless Lifeline services only on a resale basis. In response, the Coalition accused TracFone of being “misinformed” and claimed to be “facilities-based resellers with CETC status in various states.”⁴ The Coalition neither denied nor refuted TracFone’s assertion that its members provide wireless Lifeline service exclusively on a resale basis. Lest there be any question about the accuracy of that statement, the Commission’s attention is directed to a recent filing by a Coalition member with the California Public Utilities Commission. Attached to this letter is TAG Mobile, LLC’s Supplemental Advice Letter No. 2A, filed with the California Public Utilities Commission on October 12, 2011. In response to a requirement that TAG Mobile identify its cell sites, TAG Mobile states as follows: “The location of cell towers is the confidential information of TAG Mobile’s underlying carriers, Sprint and Verizon. Neither company will disclose the requested information even subject to confidentiality provisions.”

² October 6, 2011 ex parte letter from Link Up for America Coalition, at 3.

³ Letter from Mitchell F. Brecher, counsel to TracFone Wireless, Inc., to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, filed September 21, 2011.

⁴ Letter from John J. Heitman and Joshua J. Guyan, counsel to the Coalition, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, filed September 29, 2011.

Not only does Coalition member TAG Mobile (an ostensible “facilities-based reseller”) not have any cell sites, it does not even know the location of its underlying carriers’ cell sites. A more graphic acknowledgement of that Coalition member’s de facto reseller status can not be imagined. As resellers, TAG Mobile and other Coalition members are statutorily prohibited from ETC designation unless and until the Commission forbears from application or enforcement of 47 U.S.C. § 214(e)(1)(A). A consistently-imposed condition of forbearance from application of Section 214(e)(1)(A) has been that forbearance is limited to Lifeline support only.

Several other statements contained in the Coalition’s October 6 letter warrant brief additional response. At p. 3, the Coalition reiterates its prior assertion that “limiting Link Up support would drive down subscribership levels for low income consumers by reducing the subsidies these customers rely on and, in turn, increasing the amount of costs/revenue requirements that must be passed through to the low income consumer in one rate element or another.” First, any argument premised on “revenue requirements” and “rate elements” in the context of wireless services is inherently flawed. Services such as those offered by wireless ETCs including TracFone, Coalition members, and others are not subject to cost of service rate regulation. Their service prices are set based on market conditions -- not regulated rates based on revenue requirements, recovery of approved rate elements and an authorized rate of return. Second, the notion that elimination of Link Up for wireless ETCs will drive down subscribership levels by low income consumers is contradicted by the unassailable fact that TracFone and Virgin Mobile (Assurance Wireless) --by far the two largest wireless Lifeline providers -- have managed to enroll millions of low income Lifeline customers without reliance on Link Up support. TracFone alone has more than 3.8 million qualified low-income consumers enrolled in its Lifeline program and has managed to do outreach, marketing and advertising, and verify their customers’ Lifeline eligibility without having those costs of doing business subsidized by the USF and those telecommunications consumers whose contributions fund the USF.

Also, at p. 4 of its October 6 letter, the Coalition asserts that charges should be deemed “customary” charges whether or not they are actually paid (*i.e.*, that charges are offset through waiver or credit devices). The Coalition supports this claim with the following statement: “Nearly every day, more affluent customers receive the benefit of having these charges waived or credited.” The Coalition’s statement ignores one critical, albeit inconvenient, fact: carriers do not receive USF support to offset charges waived or credited to those “more affluent customers.” When a carrier elects to waive or credit a connection or service commencement charge, it foregoes the revenue from those waived or credited charges so as to provide incentives to consumers to select those carriers’ services. Those carriers do not look to the USF and the Link Up program to subsidize those business decisions.

If the Commission is committed to finding ways to reduce the cost of the low-income program without limiting the availability of Lifeline support to those who qualify for Lifeline and who need assistance, eliminating the Link Up “gravity train” for ETCs who do not impose customary service commencement charges and who use Link Up money not to connect customers to their services (as required by 47 C.F.R. § 54.411(a)(1)) but rather to subsidize their advertising and marketing and regulatory compliance costs would be an appropriate place to

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start. Based on publicly-available data, elimination of this abuse would result in a savings to the USF in excess of \$68 million per year.

Pursuant to Section 1.1206(b) of the Commission's rules, this letter is being filed electronically. If there are questions, please communicate directly with the undersigned.

Sincerely,



Mitchell F. Brecher

Attachment

cc: Ms. Kim Scardino

Attachment

TAG Mobile, LLC
Mr. Frank Del Col, CEO
1330 Capital Parkway
Carrollton, TX 75006

October 12, 2011

Proposal and Advice Letter ("PAL") Coordinator
Communications Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: TAG Mobile, LLC (WIR U-4411-C) Supplemental Advice Letter No. 2A

Dear PAL Coordinator:

In accordance with General Order 96-B and Resolution T-17002 TAG Mobile, LLC ("TAG Mobile" or "Company") hereby transmits its Advice Letter No. 2A ("AL 2A"), in which it supplements its Advice Letter No. 2 dated August 30, 2011 ("AL 2"), which requested that the California Public Utilities Commission ("CPUC" or "Commission") designate TAG Mobile as an Eligible Telecommunication Carrier ("ETC") for the limited purpose of offering Federal Lifeline and Link-Up services on a wireless basis to qualified households throughout California, excluding the Small LEC service areas.

I. Supplemental Information

A. *Identification of cell sites*

Section I.A. of Resolution T-17002 indicates that for wireless service providers the submitted map should identify the location of cell sites. The location of cell towers is the confidential information of TAG Mobile's underlying carriers, Sprint and Verizon. Neither company will disclose the requested information even subject to confidentiality provisions. Correspondence in support of this statement will be provided to Staff.

B. *Additional Minutes*

As set forth in Section III of AL 2, TAG Mobile's proposed Federal Lifeline plan offering in California will consist of 275 minutes of anytime local and long distance minutes each month for \$2.50 monthly. Additionally, the Federal Lifeline customer may purchase as additional 500 minutes for \$20.00 at any time during the month. This plan is referred to as "30 Day Plan 1" on Page 3 of the TAG Mobile, LLC Service Agreement attached as Exhibit C to AL 2. The additional minutes purchased under 30 Day Plan 1 expire thirty (30) days from the date of activation and are not affected by the replenishment of the monthly Lifeline minutes.

In addition to the 30 Day Plan 1 replenishment plan, TAG Mobile also offers the "7 Day Plan" and the "30 Day Plan 2". These replenishment plans are made available to both Lifeline

and non-Lifeline customers. The 7 Day Plan consists of 100 minutes for \$7.00, which minutes expire seven (7) days from the date of activation and are not affected by the replenishment of the monthly Lifeline minutes. The 30 Day Plan 2 consists of 1000 minutes for \$30.00, which minutes expire thirty (30) days from the date of activation and are not affected by the replenishment of the monthly Lifeline minutes. For more information on these replenishment plans please see Page 3 of the TAG Mobile, LLC Service Agreement attached as Exhibit C to AL 2

C. Retail Plan Offerings

In addition to the Federal Lifeline plan outlined in Section III of TAG Mobile's AL 2, TAG Mobile will offer the non-Lifeline plans described on Page 3 of the TAG Mobile, LLC Service Agreement attached as Exhibit C to AL 2. These plans include the Base Plan of 68 minutes per month for \$13.50 per month, the Unlimited Talk and Text plan for \$39.00 per month, and the Unlimited Talk, Text and Data plan for \$59.00 per month. Non-Lifeline customers may also purchase any of the replenishment plans described on Page 3 of the TAG Mobile, LLC Service Agreement attached as Exhibit C to AL 2 and discussed above in Section I.B. of this AL 2A.

D. Advertising

As a designated ETC, TAG Mobile commits to using media of general distribution to comply with Appendix A: Section I –E of Resolution T-17002 and Title 47 Code of Federal Regulations (C.F.R.) Section 54.201. TAG Mobile also commits to advertizing the availability of the supported services to the general public within its designated ETC service areas through the use of print ads, commercial radio, online social media/networking sites, and its retail store locations. In addition, TAG Mobile pledges that it would clearly distinguish in its advertising and marketing its wireless federal Lifeline service offering from its California Lifeline services. It also committed to continue working with CPUC California Lifeline staff in developing appropriate advertising materials promoting TAG Mobile's wireless federal Lifeline service offerings. TAG Mobile proposes to label its service offering as "Federal Lifeline/Link-Up".

II. Conclusion

TAG Mobile respectfully renews its request that the Commission designate it as an ETC for the limited purpose of offering Federal Lifeline and Link-Up services on a wireless basis to qualified households throughout California, excluding the Small LEC service areas. If you have any questions regarding this Advice Letter, please contact Margaret A. Johnson, Esq. at 601-949-4900, mjohnson@watkinsludlam.com.

TAG Mobile, LLC

By: 

Frank Del Col, CEO